

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-65/51639

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 10, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Washburn County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on January 22, 2002, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner is entitled to an increase in the asset limit allowed under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Lynn Butenhoff, ESS  
Washburn County Dept Of Social Services  
110 W 4th Avenue  
PO Box 250  
Shell Lake, WI 54871

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home in Washburn County.

2. The petitioner and her husband have a total of \$123,545.40 in assets. They seek to allocate all of those assets to the husband.
3. The petitioner receives \$602 in social security each month. She also receives \$60.12 from a pension each month.
4. The petitioner's spouse receives \$697 in social security each month. He also receives \$96.09 from a pension each month.
5. The petitioner and his wife had \$123,545 in assets in August 2001. The amount and composition of these assets have not changed significantly since then.
6. Except for approximately \$4,000 in checking and savings accounts used to pay bills, including tax assessments, and land in Michigan worth \$672, all of the petitioner's assets produce income.
7. The petitioner's assets produce \$622.13 in income each month. This is approximately a 6% annual return.
8. The petitioner originally applied for institutional medical assistance in May 2001. That application was denied because her assets exceeded the program's limit and a large portion of them did not produce a regular stream of income. She reapplied on November 14, 2001, which is about three months after her husband moved assets that did not produce regular income into investments that did. She seeks benefits retroactive to August 1, 2001.

### **DISCUSSION**

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets greater than \$100,000 but less than \$174,000 to assign one-half of their total assets to the spouse still living in the community. §49.455(6)(b)3, Stats. *MA Handbook*, Appendix §23.4.2. An institutionalized person can have up to \$2,000 in assets, which has the effect of increasing the total assets a couple may retain by that amount. Nevertheless, if the community spouse's income falls short of his needs, he may request through a fair hearing that the asset limit be increased so that more income can be produced. §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,935 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

In a hearing held last August, the petitioner requested that she and her husband be allowed to retain more assets than the spousal impoverishment limit so that the assets could produce additional income for her husband. That request was denied because many of the assets did not actually produce income. As pointed out in that decision, only resources that generate income can be reallocated at a fair hearing to the community spouse and exempted from the medical assistance asset limit. DHA Decision No. MRA-65/49853, *citing* §49.455(8)(d), Stats.; DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394. Since that time the petitioner's husband has moved most of his assets into investments that produce regular income. The only exceptions are \$4,000 in bank accounts used to pay bills, including taxes, and a piece of land in Michigan worth less than \$700 that he is letting go for unpaid taxes. Because these assets exceed the \$2,000 limit for medical assistance and the petitioner has not shown that they produce income, they make the petitioner ineligible for medical assistance.

I suggest that before the petitioner's spouse again seeks relief under the spousal impoverishment provisions he provide evidence that his bank account produces some income or moves it into an account that does. I also note that at the current time when the petitioner's income is added to that from his spouse

and that produced by his assets it totals \$2,077.34, which exceeds the \$1,935 income allowed under the spousal impoverishment provisions. Wisconsin law requires the institutionalized spouse to make her income available to the community spouse before allocating her assets to him. §49.455(8)(d), Stats. The Wisconsin Court of Appeals, in *Blumer v. DHFS*, 2000 WI App 150, 237 Wis. 2d 810, \_\_ N.W. 2d \_\_, concluded that this requirement violates the federal Medicare Catastrophic Coverage Act and held that the administrative law judge first must allocate resources to maximize the community spouse's income. However, this decision was recently overturned by the United States Supreme Court, so the original Wisconsin law applies. Of course, if when the petitioner reapplies, her husband's and her assets fall below what is necessary to produce a total of \$1,935 this rule is irrelevant.

### **CONCLUSIONS OF LAW**

1. The petitioner may not assign more than half of the total assets held by her and her husband to her husband because more than \$2,000 of those assets do not produce income.
2. The petitioner is ineligible for institutional medical assistance because her assets exceed the program's limit.

**NOW, THEREFORE, it is ORDERED**

That the petition herein be and the same hereby is dismissed.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 8<sup>th</sup> day of  
March, 2002.

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/sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
315/MDO